

STEPTOE & JOHNSON ^{L.L.P.}
ATTORNEYS AT LAW

228873

Samuel M. Sipe Jr.
202.429.6486
ssipe@steptoe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
Tel 202 429 3000
Fax 202 429 3902
steptoe.com

February 22, 2011

VIA ELECTRONIC FILING

Ms. Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

ENTERED
Office of Proceedings

FEB 22 2011

Part of
Public Record

Re: STB No. 42120 – Cargill Inc. v. BNSF Railway Company

Dear Ms. Brown:

On February 14, 2011, Cargill, Incorporated (“Cargill”), the complainant in the above-referenced matter, submitted a letter to the Board purporting to “supplement[] its Complaint to include Item 3376C, or any other fuel surcharge tariff item (regardless of its numerical designation) that is applied to its common carrier shipments.” Cargill filed its Complaint in this case on April 19, 2010. Item 3376C sets out the terms of a new fuel surcharge program that did not exist when Cargill filed its Complaint. Under the Board’s Rules, Cargill cannot effectively amend or supplement its original complaint simply by notice of its intent to do so. Cargill’s February 14, 2011 letter does not constitute an amendment or supplement and its request that the letter be treated as such by the Board should be denied.

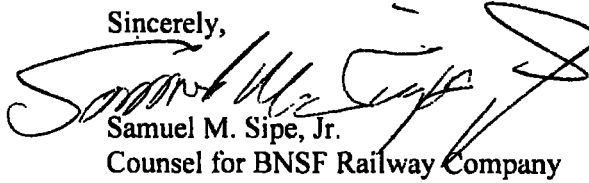
The Board’s rules permit a complainant to file an amended or supplemental complaint. 49 C.F.R. §1111.2. However, the amended or supplemental complaint must “stat[e] a cause of action alleged to have accrued within the statutory period immediately preceding the date of such tender.” *Id.* Cargill’s February 14, 2011 letter does not state a cause of action arising from BNSF’s new fuel surcharge program. It contains no substantive allegations, no description of a cause of action, no indication as to whether or when any cause of action accrued, and no indication as to the type of relief Cargill seeks or the grounds for any relief. The letter does not give BNSF sufficient notice of any amended or supplemental claims, which would be necessary in order for BNSF to answer or move to dismiss those claims. Under these circumstances BNSF cannot and therefore will not answer Cargill’s purported supplement.

STEPTOE & JOHNSON LLP

Ms. Cynthia Brown
February 22, 2011
Page 2

BNSF's position is that Cargill's February 14, 2011 letter has no effect on the scope of the issues in this proceeding which was defined by Cargill's original complaint and BNSF's answer.

Sincerely,



Samuel M. Sipe, Jr.
Counsel for BNSF Railway Company

cc: Counsel for Cargill, Inc.